

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon
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Employment

In related cases, Judge King granted summary judgment against some of the plaintiffs' discrimination claims but allowed a portion of the actions to proceed to trial. The plaintiffs are two women who work technical jobs at a smaller local business that trains employees rather than hiring people who already possess the required skills. After a downturn in business, the company had several rounds of layoffs during which the plaintiffs lost their jobs. Plaintiffs allege claims for sex discrimination, retaliation, disability discrimination, discrimination for taking a family medical leave, and wrongful discharge. The court granted summary judgment against most of the claims after finding that plaintiffs did not show that the stated reasons for their layoffs were a pretext. Sex discrimination claims concerning the opportunities the women had for training survived summary judgment because of factual issues concerning the training available to men and women.

Eckert v. P/M Industries, Inc., CV98-1607-KI, Opinion, Jan. 24, 2000; Wells v. P/M Industries, Inc., CV98-1608-KI, Opinion, Jan. 24, 2000.

Plaintiffs' Counsel:

Richard Busse

Defense Counsel:

Jeffrey Spere

Insurance

An insurer filed a declaratory judgment action seeking a determination as to whether intentional destruction of property by one named insured precludes coverage for another named "innocent" insured under the terms of a property insurance policy. One defendant owned real and personal property destroyed by a fire intentionally set by her daughter-in-law. The policy named the owner, her son and her daughter-in-law as insureds. Plaintiff denied coverage based upon a "concealment and fraud" provision and an intentional loss exclusion.

On cross-motions for summary judgment, Judge Dennis J. Hubel

held that the insurance contract was unambiguous and that the plain language of the contract supported plaintiff's denial of coverage. The court further found that while the "concealment and fraud" provision conflicted with the Oregon Insurance Code, the intentional act exclusion should be sustained as drafted. Traders & General Ins. Co. v. Freeman, CV 98-1263-HU (Findings and Recommendation, December 29, 1999 - 21 pages; Adopted by Order of Judge Panner, Jan. 20, 2000).

Plaintiff's Counsel:

Ronald Clark

Defense Counsel:

Richard Maizels

Forrest Rieke

Labor

In an action to collect unpaid wages under the Fair Labor Standards Act, Judge Haggerty ruled that an ex-employee of the car dealership known as Courtesy Ford, was not entitled to overtime wages, but did assert triable claims for minimum wage rates and

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commissions. Plaintiff worked as a "Finance Writer" for defendants for just over three months. His duties included verifying pertinent information regarding sale deals being made by defendants' sales staff, inputting information into a computer, printing up the necessary bank and Department of Motor Vehicles forms, and obtaining the buyer's signature on the paperwork. Plaintiff also offered the buyer extended warranties, credit insurance, alarm systems, and paint and fabric protection packages. Judge Haggerty ruled that this employment fell within the exception under the FLSA for "any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles . . . if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers. . . ." The court reasoned that plaintiff's entire compensation was derived from the sale of automobiles and his role in facilitating the financing of the sale. Plaintiff's position was functionally similar to the duties of "salespersons," as the term is recognized in the statute. Plaintiff's other claims for minimum wage pay, and for the payment of commissions, however, raised questions containing material facts

in dispute. Defendants were therefore not entitled to summary judgment on those claims. Gieg v. DDR, INC., dba Courtesy Ford CV 98-1563; (Opinion, Jan. 6, 2000).

Plaintiff's Counsel:

Alan Yoder

Defense Counsel:

Christopher Koback (Local)

Habeas

Judge Panner denied a habeas corpus petition filed by Russell O'Bremski claiming that his equal protection and due process rights were violated by the Oregon Board of Parole. Mr. O'Bremski's parole was revoked and he was ordered to serve the duration of his life sentence after admitting that he failed to take his antabuse as prescribed and consumed alcohol. Before proceeding to the merits of the petition, Judge Panner permitted Mr. O'Bremski to expand the record under Rule 6 of the Rules Governing 2254 Proceedings. In rejecting the equal protection claim, Judge Panner held that Mr. O'Bremski had failed to offer clear evidence that the Board's decision to require him to serve the duration of his life sentence had a discriminatory effect and was motivated, at least in part, by the public and media attention

received by the case. Judge Panner rejected the substantive due process claim on the basis that it essentially duplicated the equal protection claim and suffered from the same evidentiary deficiencies. Finally, Judge Panner rejected Mr. O'Bremski's procedural due process claim (alleging that confidential records had not been disclosed to Mr. O'Bremski at his future dispositional hearing) on the basis that O'Bremski had waived the procedural protections set forth in Morrissey v. Brewer, 408 U.S. 471 (1972) and received all the process that was due under Greenholtz v. Nebraska Penal Inmates, 442 U.S. 1 (1979). O'Bremski v. Thompson, CV 97-196-PA (Opinion, Jan., 2000).

Petitioner's Counsel:

Wendy Willis

Defense Counsel:

Lynn Larsen

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